

The administration acknowledges detainees can challenge their detention in court, but it still claims that once they get to court, they have no legal rights. In other words, the administration believes a detainee can get to the courthouse door but cannot come inside.

A Federal court has already held the administration has failed to comply with the Supreme Court's rulings. The court concluded that the detainees do have legal rights, and the administration's policies "deprive the detainees of sufficient notice of the factual bases for their detention and deny them a fair opportunity to challenge their incarceration."

The administration also established a new interrogation policy that allows cruel and inhuman interrogation techniques.

Remember what Secretary of State Colin Powell said? It is not a matter of following the law because we said we would, it is a matter of how our troops will be treated in the future. That is something often overlooked here. If we want standards of civilized conduct to be applied to Americans captured in a warlike situation, we have to extend the same manner and type of treatment to those whom we detain, our prisoners.

Secretary Rumsfeld approved numerous abusive interrogation tactics against prisoners in Guantanamo. The Red Cross concluded that the use of those methods was "a form of torture."

The United States, which each year issues a human rights report, holding the world accountable for outrageous conduct, is engaged in the same outrageous conduct when it comes to these prisoners.

Numerous FBI agents who observed interrogations at Guantanamo Bay complained to their supervisors. In one e-mail that has been made public, an FBI agent complained that interrogators were using "torture techniques."

That phrase did not come from a reporter or politician. It came from an FBI agent describing what Americans were doing to these prisoners.

With no input from Congress, the administration set aside our treaty obligations and secretly created new rules for detention and interrogation. They claim the courts have no right to review these rules. But under our Constitution, it is Congress's job to make the laws, and the court's job to judge whether they are constitutional.

This administration wants all the power: legislator, executive, and judge. Our founding father were warned us about the dangers of the Executive Branch violating the separation of powers during wartime. James Madison wrote:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny.

Other Presidents have overreached during times of war, claiming legislative powers, but the courts have reined

them back in. During the Korean war, President Truman, faced with a steel strike, issued an Executive order to seize and operate the Nation's steel mills. The Supreme Court found that the seizure was an unconstitutional infringement on the Congress's law-making power. Justice Hugo Black, writing for the majority, said:

The Constitution is neither silent nor equivocal about who shall make the laws which the President is to execute . . . The Founders of this Nation entrusted the law-making power to the Congress alone in both good times and bad.

To win the war on terrorism, we must remain true to the principles upon which our country was founded. This Administration's detention and interrogation policies are placing our troops at risk and making it harder to combat terrorism.

Former Congressman Pete Peterson of Florida, a man I call a good friend and a man I served with in the House of Representatives, is a unique individual. He is one of the most cheerful people you would ever want to meet. You would never know, when you meet him, he was an Air Force pilot taken prisoner of war in Vietnam and spent 6½ years in a Vietnamese prison. Here is what he said about this issue in a letter that he sent to me. Pete Peterson wrote:

From my 6½ years of captivity in Vietnam, I know what life in a foreign prison is like. To a large degree, I credit the Geneva Conventions for my survival. . . . This is one reason the United States has led the world in upholding treaties governing the status and care of enemy prisoners: because these standards also protect us. . . . We need absolute clarity that America will continue to set the gold standard in the treatment of prisoners in wartime.

Abusive detention and interrogation policies make it much more difficult to win the support of people around the world, particularly those in the Muslim world. The war on terrorism is not a popularity contest, but anti-American sentiment breeds sympathy for anti-American terrorist organizations and makes it far easier for them to recruit young terrorists.

Polls show that Muslims have positive attitudes toward the American people and our values. However, overall, favorable ratings toward the United States and its Government are very low. This is driven largely by the negative attitudes toward the policies of this administration.

Muslims respect our values, but we must convince them that our actions reflect these values. That's why the 9/11 Commission recommended:

We should offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors.

What should we do? Imagine if the President had followed Colin Powell's advice and respected our treaty obligations. How would things have been different?

We still would have the ability to hold detainees and to interrogate them

aggressively. Members of al-Qaida would not be prisoners of war. We would be able to do everything we need to do to keep our country safe. The difference is, we would not have damaged our reputation in the international community in the process.

When you read some of the graphic descriptions of what has occurred here—I almost hesitate to put them in the RECORD, and yet they have to be added to this debate. Let me read to you what one FBI agent saw. And I quote from his report:

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they urinated or defecated on themselves, and had been left there for 18–24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. . . . On another occasion, the [air conditioner] had been turned off, making the temperature in the unventilated room well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his hair out throughout the night. On another occasion, not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.

If I read this to you and did not tell you that it was an FBI agent describing what Americans had done to prisoners in their control, you would most certainly believe this must have been done by Nazis, Soviets in their gulags, or some mad regime—Pol Pot or others—that had no concern for human beings. Sadly, that is not the case. This was the action of Americans in the treatment of their prisoners.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DURBIN. Mr. President, I ask unanimous consent for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. It is not too late. I hope we will learn from history. I hope we will change course. The President could declare the United States will apply the Geneva Conventions to the war on terrorism. He could declare, as he should, that the United States will not, under any circumstances, subject any detainee to torture, or cruel, inhuman, or degrading treatment. The administration could give all detainees a meaningful opportunity to challenge their detention before a neutral decisionmaker.

Such a change of course would dramatically improve our image and it would make us safer. I hope this administration will choose that course. If they do not, Congress must step in.

The issue debated in the press today misses the point. The issue is not about closing Guantanamo Bay. It is not a question of the address of these prisoners. It is a question of how we treat these prisoners. To close down Guantanamo and ship these prisoners off to